IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 240 of 1999

to

FIRST APPEALNo 247 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT INDUSTIAL DEVELOPMENT CORPORATION

Versus

OFFICER ON SPECIAL DUTY

Appearance:

1. First Appeal No. 240 of 1999

MR NV ANJARIA for Petitioner No. 1

MR. S.P. SEN, AGP FOR RESP. NO. 1 IN F.A. NO. 240 TO 243 OF 1999 AND MR. L.R. PURAJI, AGP FOR RESP. NO. 1 IN F.A. NO. 244 TO 247 OF 1999.

MR.MUNSHI FOR MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 16/01/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these appeals are disposed of by this Common Judgement, as they are arising out of impugned common judgment & award dated 23-9-1998 passed by Learned Assistant Judge, Mehsana, in Land Acquisition Reference Nos. 1031/92, 1288/92 to 1292/92 and 2653/93 to 2654/93; the main Reference being 1288/92.

2. Section-4 notification was issued on 28-9-1999 for the lands situated at village Kheralu of district Mehsana. Section-6 notification was issued on 22-3-1990. The Special Land Acquisition Officer awarded compensation at the rate of Rs.3.75 per sq. meter for agricultural land and Rs.4.50 per sq. meter for non agricultural land as per his award dated 18-2-1992. Feeling aggrieved and dissatisfied with the said award the claimants filed aforesaid references which were decided by learned Assistant Judge on 23-9-1998 by his common judgment & award. The claimants claimed in all Rs.50-00 per sq. meter for the lands acquired but the learned Judge awarded in all only Rs.14.50 for their agricultural lands as well as non-agricultural lands. Thus, learned Judge gave Rs.10.75 per sq. meter more for agricultural lands and Rs.10-00 more for non-agricultural lands. Before the learned Judge the claimants relied upon the oral evidence as well as documentary evidence which includes Exhibit-37 i.e. registered sale deed dated 21-3-1990 of the land of one of the claimants, i.e. Saimkhan which was sold to a trust at the rate of Rs.14-72 per sq. meter. The judgment exhibit-23 delivered by the learned Extra Assistant Judge, Mehsana in LAR Nos. 196 to 199 of 1986 for the lands situated near to village Undhai, awarding compensation at the rate of Rs.15-00 per sq. meter which was enhanced in appeal by this Court to Rs. 18-00 per sq meter. However, learned Judge has not relied upon the judgment of the trial Court whereby Rs.15-00 per sq. was awarded which was enhanced by this Court to Rs.18-00 in appeals for the grounds stated in its judgment. However, learned Judge was of the opinion that the document exhibt-37, registered sale deed dated 21-3-1990 is genuine and reliable, therefore relying upon the same, learned Judge was of the opinion that the claimants were

entitled for in all Rs.14-50 per sq. meter and accordingly he awarded the compensation.

3. It was vehemently submitted by learned counsel Mr. Anjaria for the appellant Gujarat Industrial Development Corporation (for short 'GIDC') that, learned Judge committed grave error in placing reliance upon exhibit-37 dated 21-3-1990. He submitted that, for the reasons best known to the claimants they have deliberately not produced the Banakhat, and the sale deed was registered lately after issuance of the notification under section 4, which was issued on 28-9-1989. Mr. Anjaria therefore submitted that, the learned Judge wholly erred in relying upon the said document. He further submitted that the sale instances of two other lands were wrongly not considered and relied upon by the learned Judge, and if that were taken into consideration, he would not have awarded compensation of Rs.14-50 sq. meter.

4. In the instant case the claimants have examined Mr. Belim Vakilkhan Kasamali (exhibit-14) who is claimant in Reference No. 1290/92. He had produced revenue record of Village Form No. 7/12 at exhibit-15 to 22, wherein crops taken by the claimant have been shown. He has also produced true copy of the judgment delivered by this Court in First Appeal Nos. 410/94 to 413/94, delivered on 30-6-1994 (exhibit-23) whereby this Court dismissed the appeals filed by Special Land Acquisition Officer and allowed the cross-objections filed by the claimants and enhanced the compensation at the rate of Rs.3-00 per sq. meter in addition to what was awarded by the lower Court. He had stated on oath that, in response to the notice issued under section 9 (3) (4) of the Act he had appeared before the Special Land Acquisition Officer and claimed Rs.50-00 per sq. meter as compensation and also claimed Rs.1,00,000/- for well, pipeline construction etc. He had further deposed that the lands have road frontage and they are just adjacent to Visnagar-Ambaji State Highway and the said lands were in highly developed area.

5. They have also examined Mr. Behelim Saimkhan Imamkhan (Exhibit-36), claimant of Land Reference No. 2653/93, who had supported the oral evidence of Belim Vakilkhan Kasamali. He has deposed on oath that, he had sold his land bearing Survey No. 1233 admeasuring 11733 sq. meters by way of registered sale deed 7-8-1990 in favour of a Catholic church. The agreement to sale was executed on 5-9-1989 and the said land was sold at the rate of Rs.35,000/- per wigha and the possession of the

same was already handed over at the time of execution of agreement to sale. From the judgment of the learned Judge, it is clear that the evidence of Mr. Saimkhan Imamkhan Belim (exhibit-36) was not at all shaken in cross examination and nothing has substantially come out in his cross- examination to show that the registered sale deed exhibit-37 was not a genuine sale deed and the rate was exaggerated only with a view to get advantage on the issuance of notification under section-4. Learned Judge has carefully considered the deposition of witnesses from para-16 onwards in his judgment and rejected the contention of the other side that the document exhibit-37 can not be relied upon because the claimants have not produced the Banakhat. It may be stated that the Special Land Acquisiton Officer has not at all taken into consideration the registered sale deed at exhibit-37. The fact which is not in dispute is that, one of the claimants had sold the land bearing Survey No. 1233 to a Christian charitable trust which was a registered sale deed and paid the consideraton also by way of account payee cheque. In such circumstances genuineness of such document cannot be doubted. There is nothing on record to doubt the genuiness of exhibit-37 and in absence of any material placed before us, we are not in a postion to take a different view of the matter than the view taken by learned Judge.

6. Before parting, we must state that, Learned Judge has not chosen to rely upon the judgment of the trial Court at exhibit-23. We have also not taken into consideration the judgment of the trial Court at exhibit-23, wherein initially Rs.15-00 per. sq. meter was granted and later on in appeal filed by Special Land Acquisition Officer, this Court while rejecting the appeal allowed cross-objections of the claimants and raised the compensation to Rs.18-00 per sq. meter. However, considering the totality of the circumstances, we are of the considered opinion that, the learned Judge has rightly awarded in all Rs.14-50 per sq. meter and such type of award cannot be interfered with by this Court in appeals.

7. In view of the above observations, all these appeals fail and are dismissed. Rule discharged. However, there will be no order as to costs.

Dt: 16-1-2002 (B.J. Shethna, J) (N.G. Nandi, J)

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